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Randolph, Carman Fitz

Brief on contraband of war

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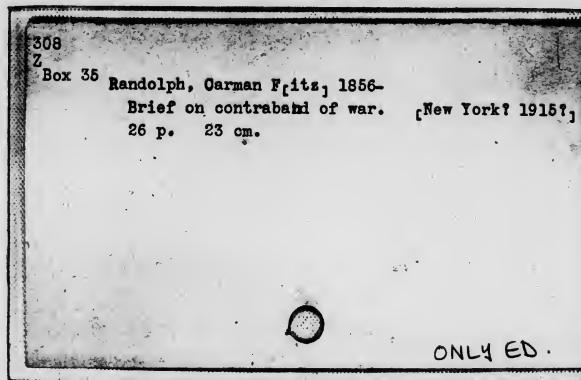
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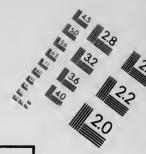
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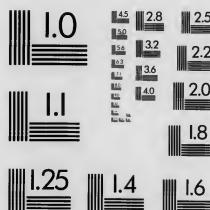
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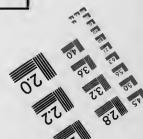
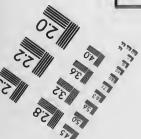
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BRIEF ON CONTRABAND OF WAR

CARMAN F. RANDOLPH

BRIEF ON CONTRABAND OF WAR

I am requested to prepare a brief on contraband of war, with special regard to the belligerent practices which are now affecting the commerce of the United States.

I.

The Great War, breaking out in this period of widespread and interlocking trade relationships, has caused an unprecedented dislocation of seaborne commerce.

A thorough analysis of the underlying causes and objects of the war would, I think, show a larger infusion of commercial ambitions of the political sort than has characterized any great conflict since England and France fought all over the globe in the Seven Years War, 1756-1763. These ambitions deeply concern the United States, awake at last to the need of a foreign trade more nearly approximating their great capacity to serve it. They are not for discussion here, but we mark their tendency to that militant commercialism which is the foe of normal commerce.

Never before have neutral nations been so pressed to maintain their commercial rights. Mainly these rights centre on the matter of contraband, for this not only affects commodities actually threatened with seizure, but, by the sweep of the measures taken against them, substantially embarrasses all neutral intercourse. Broadly speaking, every restraint on the freedom of the seas is traceable to an exaggerated contraband list.

Never before have neutral rights depended more upon a bold but tactful demonstration of their intrinsic justice. Never less upon the militant force behind them for today all the great naval powers are belligerent save the United States.

Nations who are neighbors to the conflict are, though luckily handling their problems, more or less hampered by the delicacy of their position. The United States—a distant neutral and the greatest—must plan and act in behalf of neutral commerce the world over.

For this commerce we claim free course except when it would attempt to thrust anything whatever into a town or a country duly besieged and except when it carries directly or indirectly munitions of war to belligerent territory or things capable of military use evidently to military forces.

II.

When a neutral nation advises a belligerent that its commercial rights are being compromised its claim to consideration is enhanced when these rights are essentially liberal in spirit and have, with their corresponding duties, been asserted and observed with reasonable, if not with singular consistency.

We confidently apply this test to the historic policy of the United States—reciting the doctrine of our treaties, typical examples of our diplomatic protests as a neutral and of our conduct as a belligerent and a rule of our jurisprudence especially pertinent to the present situation.

The Supreme Court of the United States, following the familiar rule of international law, thus classifies commodities in their relation to contraband: "The

first consists of articles manufactured and primarily and ordinarily used for military purposes, in time of war; the second, of articles which may be and are used for purposes of war or peace, according to circumstances; and the third, of articles exclusively used for peaceful purposes. Merchandise of the first class, destined to a belligerent country or to places occupied by the army or navy of a belligerent, is always contraband [absolute contraband]; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent [conditional contraband]; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege" (The Peterhoff, 5 Wallace 28).

Before fairly winning their independence the United States recorded in the treaty with France of 1778 their approval of a contraband list closely restricted to actual munitions of war with "horses and their furniture." Substantially similar provisions figured in treaties with France 1785, 1800, The Netherlands 1782, Sweden 1783, Prussia 1785, Spain 1795, and the treaty of 1799 with Prussia provided that even munitions might be detained or preempted but not confiscated.

Our treaty of 1824 with Colombia contained a contraband list modeled upon those of the earlier conventions, and this list was substantially followed in the treaties thereafter concluded with other American republics.

Our treaty of 1871 with Italy limits contraband to munitions of war "and generally all kinds of arms and instruments of iron, steel, brass or copper or of any other materials manufactured, prepared or formed expressively to make war by sea or land."

The only discordant note in our treaty provisions in regard to contraband appears in the treaty of 1794 with Great Britain. Article 18 after giving a list of munitions of war specifies "timber for ship building, "tar or rosin, copper in sheets, sails, hemp and cordage, "and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only "excepted," and this is followed by a vaguely worded clause contemplating the preemption, but not the confiscation of provisions and "other articles" which may become contraband "according to the existing law of nations." It will be recalled that the treaty as a whole was ill received by the country at large and it is significant that even Alexander Hamilton condemned this article, saying in a cabinet note to President Washington July 9, 1795 "as [article 18] may "possibly become the subject of abuses on the side of "Great Britain and of complaint on that of France "I should have liked the treaty better without it. On "the whole I think this article the worst in the treaty "except the 12th though not defective enough to be "an objection to its adoption" (Hamilton's Works, v. 354).

A few out of many diplomatic protests in regard to contraband will sufficiently illustrate the constancy and the vigor displayed by the United States in asserting their rights on occasion.

On May 7, 1793, Thomas Jefferson, then secretary of state, said in a letter to Thomas Pinckney, our Minister to Great Britain: "You express your apprehension that some of the belligerent powers may stop "our vessels going with grain to the ports of their "enemies and ask instructions which may meet the "question in various points of view, intending, how-

"ever, in the meantime to contend for the amplest "freedom of neutral intercourse. Your intention in "this is perfectly proper and coincides with the ideas "of our government in the particular case you put "as in general cases. Such a stoppage of an un- "blockaded port would be so unequivocal an infringe- "ment of neutral rights that we cannot conceive it "will be attempted" (Moore, Int. Law, vii, 675).

Said Secretary Cass, in a letter of June 27, 1859, to Mr. Mason, our Minister to France: "It adds to the "complications arising out of the uncertainty in which "this subject [contraband] is involved, that there is "no common tribunal empowered to decide between "the independent parties when a belligerent nation, "interested in the measure, undertakes to add a "new article to the catalogue of contraband, upon the "assumption that it has changed its character from a "peaceable to a warlike one, in consequence of a change "in the objects to which it may be applied, either by "a revolution in the mode of conducting war, or by "improvements in the implements used in its prosecu- "tion. The pretension of a prerogative on the part "of sovereigns, whether in peace or war, if indeed any "such exist, to decide these questions, except so far "as relates to their own subjects, is utterly repudiated "by the United States" (Moore, vii. 657).

In 1904 a Russian prize court confiscated a quantity of American railway material and flour found on the ship "Arabia" and destined to commercial houses in Japan. Secretary Hay said in a letter of August 30 to Mr. McCormick, our ambassador to Russia: "In view of its well known attitude, it should hardly seem necessary to say that the Government of the United States is unable to admit the validity of the judgment which appears to have been rendered in

disregard of the settled law of nations in respect to what constitutes contraband of war. . . . Articles which, like arms and ammunition, are by their nature of self-evident warlike use are contraband of war if destined to enemy territory; but articles which, like coal, cotton and provisions, though ordinarily innocent are capable of warlike use, are not subject to capture and confiscation unless shown by evidence to be actually destined for the military or naval forces of a belligerent. This substantive principle of the law of nations cannot be overridden by technical rule of the prize court that the owners of the captured cargo must prove that no part of it may eventually come to the hands of the enemy forces. The proof is of an impossible nature, and it cannot be admitted that the absence of proof in its nature impossible to make can justify the seizure and confiscation. . . . The established principle of discrimination between contraband and non-contraband goods admits of no relaxation or refinement. . . . The criterion of warlike usefulness and destination has been adopted by the common consent of civilized nations, after centuries of struggle in which each belligerent made indiscriminate warfare upon all commerce of neutral states with the people of the other belligerent, and which led to reprisals as the mildest available remedy. . . . You will express to Count Lamsdorff the deep regret and grave concern with which the Government of the United States has received his unqualified communication of the decision of the prize court; you will make earnest protest against it and say that the United States regrets its complete inability to recognize the principle of that decision and still less to acquiesce in it as a policy" (Moore, vii., 689-691).

Considering the attitude toward contraband which the United States have taken as a belligerent we find little precedent of vital importance in the present controversy except in our Civil War.

We fought England in 1812 partly because we represented her practical definition of contraband. The war with Mexico calls for no special comment in the matter of contraband. Our adhesion to traditional policy in the war with Spain is sufficiently indicated in General Orders No. 492: "Contraband of war comprehends only articles having a belligerent destination as to an enemy's port or fleet." Articles "absolutely contraband" include all munitions of war and "horses." Articles "conditionally contraband" are "coal, "when destined for a naval station, a port of call or a "ship or ships of the enemy; materials for the construction of railways or telegraphs and money, when "such materials or money are destined for the enemy's "forces; provisions, when destined for an enemy's "ship or ships or for a place that is besieged" (Moore, vii., 669).

In the Civil War the early and effective blockade of the long line of Southern coast practically eliminated the question of contraband so far as direct intercourse with Confederate territory was concerned. Anything from a gun to a pin destined to this territory was liable to capture and confiscation for attempting to run the blockade.

The outstanding incident of the Civil War in the matter of contraband and the authoritative crystallization of the doctrine developed by our jurists and diplomats is the decision of the Supreme Court on the facts in the case of "The Peterhoff" (5 Wallace, 28) and the spirit of its opinion.

During the Civil War the Mexican town of Matamoros on the Rio Grande became an important distributing point for goods shipped from Europe and sent from Matamoros across the boundary river into Confederate territory. The British ship "Peterhoff" bound from London to Matamoros was seized near St. Thomas by an American war ship and taken before a prize court which condemned the ship and cargo. The Court found that the Mexican port was the true destination and so absolved the ship from attempting to run the blockade, which extended no further than the mid-channel of the boundary river.

Coming to the cargo described in the opinion of the prize court (Federal Cases No. 11,024) as comprising thirty-nine consignments, thirty-eight of which, be it noted, were to be delivered "to order," the Court promptly released certain articles as being essentially non-contraband.

"Another portion," said the Court, "was in our judgment [absolute contraband] or if [conditional contraband] destined directly to the rebel military service . . . artillery harness, men's army bluchers, artillery boots and government regulation gray blankets." These were condemned and with them whatever other articles were affected by the "established rule that the part of the cargo belonging to the same owner as the contraband portion must share its fate. "A large portion, perhaps," said the Court, "was [conditional contraband] but is not proved as we think, to have been actually destined to belligerent use and cannot therefore be treated as contraband." Here is the significant point. Among the articles released were such things as horse shoes, horse shoe nails, saddlers and other hardware, a quantity of drugs including quinine, etc., etc. These, though

supposedly destined to the military service, were released.

Of even more importance than the actual disposition of the case is the high plane of belligerent duty in which the opinion of the Court was conceived. "Trade with a neutral port in immediate proximity to the territory of one belligerent is certainly very inconvenient to the other. Such trade, with unrestricted inland communication between such a port and the enemy's territory impairs the value of a blockade of the enemy's coast. But in cases such as that now in judgment we administer the public law of nations, and are not at liberty to inquire what is for the particular advantage or disadvantage of our own or another country. We must follow the light of reason and the masters of international jurisprudence."

III.

Germany's contraband list is for obvious reasons of relatively small concern to the United States. It is the British list that counts. I shall here only emphasize the salient features of British contraband policy referring to an appendix for documents that will fully illustrate its theory and practice.

On August 4, 1914, the King in Council proclaimed lists of absolute and conditional contraband corresponding with those of the Declaration of London, except that balloons and airships are taken out of the conditional list and "aeroplanes, airships, balloons and aircraft of all kinds" are placed in the absolute list.

On August 20 the King in Council "adopted" the Declaration of London subject to "certain conditions and modifications." The Government, thus reserving the right to mangle the Declaration as its interest

might dictate from time to time, forthwith discredited article 35, "Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy; or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port. . . ."

The Government have thus declined to respect articles conditionally contraband when bound for a neutral port and they have played with the Declaration lists at pleasure—even transferring things from the free to the absolute list, *e.g.*, rubber and a number of metallic ores.

In short the British Government arrogate the right to dictate the contraband list in disregard of neutral rights and threaten to extend it at will.

At this point we consider what from the maritime standpoint is the most sinister development of the war.

Both Great Britain and Germany are manoeuvring to place the other's country in what is practically a state of siege so that all commodities seeking entrance shall be in fact contraband.

If the dreadful right of siege may, morally, be claimed over a country it cannot be lawfully gained save by a tremendous exertion of physical force. Siege means circumvallation. By effectively blockading its ports, by closing its land frontiers a belligerent truly besieges an enemy country. Neutral intercourse stops. Neutral nations bow to force displayed at the boundary and stand by while a friendly people are being starved into submission.

There is no equivalent for siege. No right to bar intercourse by proclamation or by distant operations against neutral commerce. Specifically and emphatically no siege by extending the contraband list or by

substituting for the visible blockade a danger zone wherein neutral, as well as enemy lives and property are menaced by hidden and furtive perils.

In extension of the contraband list we touch Great Britain's design against Germany. Actuated, ostensibly, by Germany's assumption of control over the food supply of the nation the British Government threaten to cut off foodstuffs as contraband.

I am not concerned in Germany's explanation of how the supply is to be conserved for the people, with her promise to let imported foodstuffs alone or with England's disbelief in its performance.

If ten million German men are with the army I see no reason why sixty million German men, women and children have not a claim of world-wide appeal to whatever assurance of subsistence their state can give them. I strongly dissent from the position taken by Sir Edward Grey in his Note of February 10 to Ambassador Page: "The reason for drawing a distinction between foodstuffs intended for the civil population and those for the armed forces or enemy government disappears when the distinction between the armed forces and the civil population itself disappears." The fate of Belgium is a warning against grouping the mass of helpless people with the soldiery.

This is not Great Britain's first attempt to hold up American commerce while she tried to starve out an enemy country. The familiar controversy in the war of the French Revolution is thus epitomized by Chancellor Kent: "It was insisted on the part of England 'that by the law of nations all provisions were to be 'considered as contraband, in the case where the de- 'priving of an enemy of those supplies was one of the 'means employed to reduce him to reasonable terms 'of peace; and that the actual situation of France

"was such as to lead to that mode of distressing her, "insomuch as she had armed almost the whole labor-
"ing class of her people for the purpose of commencing
"and supporting hostilities against all the governments
"of Europe. This claim on the part of England was
"promptly and perseveringly resisted by the United
"States; and they contended that corn, flour and meal
"being the produce of the soil and labor of the country
"were not contraband of war unless carried to a place
"actually invested" (Commentaries I, 138).

On February 4 Germany proclaimed a "war zone" around Great Britain to become effective February 18. Within this zone British merchantmen are threatened with destruction (with, of course, any neutral cargo) "even if it may not always be possible to save their "crew and passengers" (including, of course, any neutral citizens) and in the language of the German Note of February 18, "Neutral ships which . . . enter "these closed waters will themselves bear the responsibility for any unfortunate accidents that may occur."

While directed against commerce and so deserving condemnation by neutrals as a monstrous interference with their trade the threat to human life in this employment of the submarine and the mine raises an issue beyond the province of this brief on contraband.

The outcome cannot be doubtful. Destruction of property on land as an incident to the killing of soldiers is familiar enough. The world cannot tolerate the killing of civilians at sea as an incident to the destruction of property. Surely the mere suggestion should give an irresistible force to the movement, halted by war, to free the sea law from its splash of barbarism by freeing property from capture.

Both Great Britain and Germany parade their designs as reprisals—witness the British Note of February 19 and the German note of February 18. Reprisal is a strong card in the casuistry of militarism, and the conventional excuse for every new barbarity in the conduct of a campaign. Indeed war itself is frequently advertised as a reprisal for a wrong otherwise without redress and long buried grievances are occasionally dug up for evidence. After the fall of the French Empire in 1870 a French statesman is said to have asked Von Moltke "Against whom are you now fighting?" "Louis XIV," replied the soldier, referring to the ravaging of the Palatinate nearly two hundred years before.

A neutral nation which finds its interests increasingly prejudiced by belligerent stroke and counter-stroke will waste its time and lose its rights if it stops to identify the original cause or weigh present responsibility in the balance. But if, indifferent to a plea of reprisal from either side it protest every real infringement of rights, its impartial pressure may tend somehow to ease the situation—for unchecked reprisals inevitably reach a stage embarrassing if not intolerable for each belligerent.

Unvexed by the rules of siege the United States are entitled to claim from Great Britain free course for foodstuffs, cotton, etc., to German ports unless the articles be plainly destined to military use and from Germany the abolition of the invisible and furtive menace against our intercourse with the British Isles.

We consider now the case of our exports to neutral ports whence it is possible to forward them to Germany without belligerent interference—We assume that the

larger portion will be so forwarded unless stopped by the neutral government.

In this relation we examine the suggestion that, as the United States are responsible for a change in the law of nations in regard to "continuous voyage," whereby goods on the way to a neutral port may be seized upon evidence of ulterior enemy destination, they are now estopped from complaining of the seizure of goods bound to Copenhagen or Genoa, whence they might find their way to Germany.

Doubtless the United States are primarily responsible for this change in the law. In 1804 Lord Stowell declared in The "Imina" (3 Robinson 166) that "goods 'going to a neutral port cannot come under the description of contraband, all goods going there being equally lawful. . . . The rule respecting contraband, as 'I have always understood it, is that the articles must 'be taken *in delicto*, in the actual prosecution of the 'voyage to an enemy's port.'" Upon this ruling he released goods going from Dantzig to Emden, a neutral port near the enemy territory of Holland.

In The "Peterhoff," (5 Wallace 28) the United States Supreme Court did not follow Lord Stowell's ruling. It sustained, as we have seen, the seizure of certain goods going from London to Matamoros. At the time the principle of the decision was severely criticized abroad, but it has won its way to a wide recognition, and, though not yet reviewed by a British prize court, it was urged by the British Government in the Boer War in the case of "The Bundesrath."

The United States stand by the principle of the Peterhoff Case. They are gratified by its wide acceptance. But they do not stupidly accept a foreign measurement of its obligation that would nullify their traditional principle in respect of contraband.

Specifically the United States concede that according to the principle they have commended to the law of nations all distinctively army supplies going from this country to Copenhagen or Genoa are liable to seizure unless plainly intended for use in neutral territory. They consistently deny liability in the case of metals, oil, foodstuffs, cotton, etc., which are destined to these ports, consigned "to order" and, if likely to go to Germany, are not earmarked for war use. For the Supreme Court did not extend its rule to articles in this category and the rule is to be read in the light of its practical application.

In other words the rule of the Peterhoff Case does not involve a concession of belligerent power to dictate a contraband list in disregard of neutral rights. In this relation we note that when, in the war between Russia and Japan, Count Lamsdorff "remarked that in the absence of any international decision as to what was, or was not contraband of war, it appeared to be within the power of a belligerent to arbitrarily decide what articles were to be so considered" (Parliamentary Papers, 1905, Russia No. 1, p. 10), the British Government and our own efficiently protested against an injurious application of this arrogant proposition.

The mischievous after-effects of conceding to a powerful and desperate belligerent a moral right to dictate a contraband list are disclosed by surveying the British list from a higher viewpoint than that of its immediate effects, serious as these are.

Scrutiny of the items shows how large and varied a demand modern war makes upon articles commonly of peaceful use—upon the finished products, and especially upon the raw materials of industry. Now, if these things shall be forced into the category

of contraband they will, for the average nation, be least accessible at the moment of their greatest need. Will not nations be impelled to acquire and store vast quantities of the new kinds of "war material," thus tying up public funds and, by their abnormal demand, raising prices to industrial users? If such things as oil and copper shall be recognized as precarious in war time may not great states which lack their own supplies be tempted to acquire them by conquest? Does not the British list forecast the larger cost of that "preparedness for war" whose exaggerations lay so heavy a burden upon the world? These questions cannot be brushed aside by saying that the list is of temporary concern and by urging a present sacrifice of neutral interests for the sake of an early and a lasting peace.

Peace will come. If it is to prevail beyond the point of physical and financial recuperation from the war, beyond the point of recovery from war nausea it must be built upon a better foundation than has hitherto supported international relations. Commercial interests are, day in and day out, the prime factor in these relations. Liberally conceived and skilfully handled these interests will stiffen, and give direction to the moral forces arrayed against the militarism which threatens the work of reconstruction. The United States, now by force of circumstances the trustee for normal commercial interests the world over, should strive to maintain the laws of war at sea at a high level of humanness and justice—in war holding fast to sound principles, if only the better to assure their standing in the arrangements and conferences following the war.

In these conferences the statesmen, jurists, soldiers and sailors delegated to discuss the law of nations should be reinforced by merchants who may, by securing an instructed consideration of commercial needs, obtain a better recognition of commercial rights. But for whatever occasion the future may hold let our merchants prepare their "case" for the free sea and the open door—meanwhile supporting our Government's efforts to abate the illegal war measures against neutral commerce.

CARMAN F. RANDOLPH.

165 Broadway, New York.

March 2, 1915.

NOTE.

Mr. Asquith's statement, read in the House of Commons on March 1 and communicated to neutral governments, after depicting Germany's war zone measure accurately and soberly, says: "The German declaration substitutes indiscriminate destruction for regulated captures. Germany has adopted this method "against the peaceful trader and the non-combatant, "with the avowed object of preventing commodities of all "kinds, including food for the civilian population, from "reaching or leaving the British Isles or Northern France.

"Her opponents are, therefore, driven to frame retaliatory measures in order in their turn to prevent "commodities of any kind from reaching or leaving "Germany.

"These measures will, however, be enforced by the "British and French Governments without risk to neutral "ships or neutral or non-combatant lives, and in strict "observation of the dictates of humanity. The British

"and French Governments will, therefore, hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin.

"It is not intended to confiscate such vessels or cargoes unless they would otherwise be liable to confiscation. Vessels with cargoes which sailed before this date will not be affected." In communicating the statement to our Government the British Ambassador presented the following instruction from his own: "When presenting joint Anglo-French communication you should inform the United States Government that the communication received from them through the American Ambassador in London respecting a possible limitation of the use of submarines and mines and an arrangement for supplying food to Germany is being taken into careful consideration by His Majesty's Government in consultation with their allies."

Reading together the statement and the instructions it seems the United States are not yet confronted by an actual decree. The matter is still in the diplomatic stage. In these circumstances I shall not hold back this brief in order adequately to discuss the momentous issues involved in a threat sufficiently ominous to make thorough consideration imperative. But I do not give an offhand opinion when I say that the threat implicitly asserts that neutral commerce has no rights which a powerful belligerent is bound to respect.

APPENDIX.

DECLARATION OF LONDON.

CHAPTER II—CONTRABAND OF WAR.

22.—The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband:

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives specially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military wagons, field forges and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armor plates.

(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

23.—Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

24.—The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:

(1) Foodstuffs.

(2) Forage and grain, suitable for feeding animals.

(3) Clothing, fabrics for clothing and boots and shoes, suitable for use in war.

(4) Gold and silver in coin or bullion; paper money.

(5) Vehicles of all kinds available for use in war, and their component parts.

(6) Vessels, craft and boats of all kinds; floating docks, parts of docks and their component parts.

(7) Railway material, both fixed and rolling stock, and material for telegraphs, wireless telegraphs, and telephones.

(8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.

(9) Fuel; lubricants.

(10) Powder and explosives not specially prepared for use in war.

(11) Barbed wire and implements for fixing and cutting the same.

(12) Horseshoes and shoeing materials.

(13) Harness and saddlery.

(14) Field glasses, telescopes, chronometers and all kinds of nautical instruments.

25—Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

28—The following may not be declared contraband of war:

(1) Raw cotton, wool, silk, jute, flax, hemp and other raw materials of the textile industries, and yarns of the same.

(2) Oil seeds and nuts; copra.

(3) Rubber, resins, gums and lacs; hops.

(4) Raw hides and horns, bones and ivory.

(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

(6) Metallic ores.

(7) Earths, clays, lime, chalk, stone, including marble, bricks, slates and tiles.

(8) Chinaware and glass.

(9) Paper and paper-making materials.

(10) Soap, paint and colors, including articles exclusively used in their manufacture, and varnish.

(11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia and sulphate of copper.

(12) Agricultural, mining, textile, and printing machinery.

(13) Precious and semi-precious stones, pearls, mother-of-pearl and coral.

(14) Clocks and watches, other than chronometers.

(15) Fashion and fancy goods.

(16) Feathers of all kinds, hairs and bristles.

(17) Articles of household furniture and decoration; office furniture and requisites.

ORDER IN COUNCIL AUGUST 20, 1914.

WHEREAS during the present hostilities the Naval Forces of his Majesty will co-operate with the French and Russian Naval Forces, and

WHEREAS it is desirable that the naval operations of the allied forces so far as they affect neutral ships and commerce should be conducted on similar principles, and

WHEREAS the Governments of France and Russia have informed his Majesty's Government that during the present hostilities it is their intention to act in accordance with the provisions of the Convention known as the Declaration of London, signed on the 26th day of February, 1909, so far as may be practicable.

Now, THEREFORE, his Majesty, by and with the advice of his Privy Council, is pleased to order, and it is hereby ordered, that during the present hostilities the Convention known as the Declaration of London shall, subject to the following additions and modifications, be adopted and put in force by his Majesty's Government, as if the same had been ratified by his Majesty.

The additions and modifications are as follows:

(1) The lists of absolute and conditional contraband contained in the Proclamation dated August 4, 1914, shall be substituted for the lists contained in Articles 22 and 24 of the said Declaration.

(2) A neutral vessel which succeeded in carrying contraband to the enemy with false papers may be detained for having carried such contraband if she is encountered before she has completed her return voyage.

(3) The destination referred to in Article 33 may be inferred from any sufficient evidence, and (in addition to the presumption laid down in Article 34) shall be presumed to exist if the goods are consigned to or for an agent of the Enemy State or to or for a merchant or other person under the control of the authorities of the Enemy State.

(4) The existence of a blockade shall be presumed to be known—
 (a) to all ships which sailed from or touched at an enemy port a sufficient time after the notification of the blockade to the local authorities to have enabled the enemy Government to make known the existence of the blockade.
 (b) to all ships which sailed from or touched at a British or allied port after the publication of the declaration of blockade.

(5) Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture to whatever port the vessel is bound and at whatever port the cargo is to be discharged.

(6) The General Report of the Drafting Committee on the said Declaration presented to the Naval Conference, and adopted by the Conference at the eleventh plenary meeting on February 25, 1909, shall be considered by all Prize Courts as an authoritative statement of the meaning and intention of the said Declaration, and such Courts shall construe and interpret the provisions of the said Declaration by the light of the commentary given therein.

And the Lords Commissioners of his Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of his Majesty's Principal Secretaries of State, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, all other Judges of his Majesty's Prize Courts, and all Governors, Officers and Authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain.

ORDER IN COUNCIL OCTOBER 29.

WHEREAS by an Order in Council dated the twentieth day of August, 1914, His Majesty was pleased to declare that during the present hostilities the Convention known as the Declaration of London should, subject to certain additions and modifications therein specified, be adopted and put in force by his Majesty's Government; and

WHEREAS the said additions and modifications were rendered necessary by the special conditions of the present war; and

WHEREAS it is desirable and possible now to re-enact the said Order in Council with amendments in order to minimize, so far

as possible, the interference with innocent neutral trade occasioned by the war:

NOW, THEREFORE, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered as follows:

1. During the present hostilities the provisions of the Convention known as the Declaration of London shall, subject to the exclusion of the lists of contraband and non-contraband, and to the modifications hereinafter set out be adopted and put in force by His Majesty's Government.

The modifications are as follows:

(i) A neutral vessel, with papers indicating a neutral destination, which, notwithstanding the destination shown on the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage.

(ii) The destination referred to in Article 33 of the said Declaration shall (in addition to the presumptions laid down in Article 34) be presumed to exist if the goods are consigned to or for an agent of the enemy State.

(iii) Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband shall be liable to capture on board a vessel bound for a neutral port if the goods are consigned "to order," or if the ship's papers do not show who is the consignee of the goods or if they show a consignee of the goods in territory belonging to or occupied by the enemy.

(iv) In the cases covered by the preceding paragraph (iii) it shall lie upon the owners of the goods to prove that their destination was innocent.

2. Where it is shown to the satisfaction of one of His Majesty's Principal Secretaries of State that the Enemy Government is drawing supplies for its armed forces from or through a neutral country, he may direct that in respect of ships bound for a port in that country, Article 35 of the said Declaration shall not apply.

Such direction shall be notified in the *London Gazette*, and shall operate until the same is withdrawn. So long as such direction is in force, a vessel which is carrying conditional contraband to a port in that country shall not be immune from capture.

3. The Order in Council of the 20th August, 1914, directing the adoption and enforcement during the present hostilities of

the Convention known as the Declaration of London, subject to the additions and modifications therein specified, is hereby repealed.

4. This Order may be cited as "the Declaration of London Order in Council, No. 2, 1914."

And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of His Majesty's Principal Secretaries of State, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, all other Judges of His Majesty's Prize Courts, and all Governors, Officers and authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain.

PROCLAMATION DECEMBER 23.

WHEREAS on the fourth day of August, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband of war during the war between Us and the German Emperor; and

WHEREAS on the twelfth day of August, 1914, We did by Our Royal Proclamation of that date extend Our Proclamation aforementioned to the war between Us and the Emperor of Austria, King of Hungary; and

WHEREAS on the twenty-first day of September, 1914, We did by Our Royal Proclamation of that date make certain additions to the list of articles to be treated as contraband of war; and,

WHEREAS on the twenty-ninth day of October, 1914, We did by Our Royal Proclamation of that date withdraw the said lists of contraband, and substitute therefor the lists contained in the schedules to the said Proclamation; and

WHEREAS it is expedient to make certain alterations in and additions to the said lists:

NOW, THEREFORE, We do hereby declare, by and with the advice of Our Privy Council, that the lists of contraband contained in the schedules to Our Royal Proclamation of the twenty-ninth day of October aforementioned are hereby withdrawn, and that in lieu thereof during the continuance of the war, or until We do give further public notice, the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schedule II hereto will be treated as conditional contraband.

SCHEDULE I.

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

2. Projectiles, charges and cartridges of all kinds, and their distinctive component parts.

3. Powder and explosives specially prepared for use in war.

4. Ingredients of explosives, viz., nitric acid, sulphuric acid, glycerine, acetone, calcium acetate and all other metallic acetates, sulphur, potassium nitrate, the fractions of the distillation products of coal tar between benzol and cresol inclusive, aniline, methylaniline, dimethylaniline, ammonium perchlorate, sodium perchlorate, sodium chlorate, barium chlorate, ammonium nitrate, cyanamide, potassium chlorate, calcium nitrate, mercury.

5. Resinous products, camphor and turpentine (oil and spirit).

6. Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.

7. Range-finders and their distinctive component parts.

8. Clothing and equipment of a distinctively military character.

9. Saddle, draught and pack animals suitable for use in war.

10. All kinds of harness of a distinctively military character.

11. Articles of camp equipment and their distinctive component parts.

12. Armour plates.

13. Ferro alloys, including ferro-tungsten, ferro-molybdenum, ferro-manganese, ferro-vanadium, ferro-chrome.

14. The following metals: Tungsten, molybdenum, vanadium, nickel, selenium, cobalt, haematite pig-iron, manganese.

15. The following ores: Wolframite, scheelite, molybdenite, manganese ore, nickel ore, chrome ore, haematite iron ore, zinc ore, lead ore, bauxite.

16. Aluminium, alumina and salts of aluminium.

17. Antimony, together with the sulphides and oxides of antimony.

18. Copper, unwrought and part wrought, and copper wire.

19. Lead, pig, sheet or pipe.

20. Barbed wire and implements for fixing and cutting the same.

21. Warships, including boats and their distinctive component parts of such a nature that they can only be used on a vessel of war.

22. Submarine sound signalling apparatus.

23. Aeroplanes, airships, balloons and aircraft of all kinds, and their component parts, together with accessories and articles

recognizable as intended for use in connection with balloons and aircraft.

24. Motor vehicles of all kinds and their component parts.
25. Tyres for motor vehicles and for cycles, together with articles or materials especially adapted for use in the manufacture or repair of tyres.
26. Rubber (including raw, waste and reclaimed rubber) and goods made wholly of rubber.
27. Iron pyrites.
28. Mineral oils and motor spirit, except lubricating oils.
29. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

SCHEDULE II.

1. Foodstuffs.
2. Forage and feeding stuffs for animals.
3. Clothing, fabrics for clothing, and boots and shoes suitable for use in war.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.
6. Vessels, craft and boats of all kinds, floating docks, parts of docks, and their component parts.
7. Railway materials, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.
8. Fuel, other than mineral oils. Lubricants.
9. Powder and explosives not specially prepared for use in war.
10. Horseshoes and shoeing materials.
11. Harness and saddlery.
12. Hides of all kinds, dry or wet; pigskins, raw or dressed; leather, undressed or dressed, suitable for saddlery, harness, or military boots.
13. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

YALE



**END OF
TITLE**